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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,265	04/22/2004	Patrice Cohen	753-B01.US	6445

7590 03/26/2007
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CANADA

EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/829,265

Applicant(s)

COHEN, PATRICE

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-74 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20040422</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 5-8, 13-19, 33-35, 40-43, 46, 48-54 and 68-70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following are each unclear since a plurality of element were previous set forth in the claims and one cannot determine which of the plurality is being referred to: claim 5, “the third securing flap edge”, claim 6, “the fist and second securing flap edges” (all of them are angled to “each other”?), claim 40, “the third securing flap edge” and claim 41, “the first and second securing flap edges”.

Claims 13-15 are inconsistent with claim 12 from which they depend. Claim 12 recites that one side of the blank is blank. Claim 13 is contradictory insofar as it defines that both sides of the blank have an image thereon, i.e. that the other side is not blank. Claims 48-50 are indefinite for the same reason. It is assumed, for the purpose of applying the prior art, that claims 13-15 were intended to be dependent upon claim 1 and that claims 48-50 were intended to be dependent upon claim 36. However, correction is required.

The following each lack antecedent basis in the claims, i.e. each is only inferentially set forth: claim 16, “the rectangular panels”, claim 19, “the...second and third securing flaps”, claim 46, “the....fourth” edge, claim 48, “the card”, claim 51, “the rectangular panels” and claim 54, “the...second and third securing flaps”.

Claims 33-35 are unclear since claim 21 is not directed to a polyhedron including a plurality of three dimensional forms as set forth in claim 33. It is assumed, for the purpose of

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applying the prior art, that the claim is defining that *each* of the dimensional forms is according to claim 21. Claims 68-70 are indefinite for the same reason.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 10-12, 20, 21, 24-26, 31, 32, 36, 45-47, 55, 56, 59-62, 66 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Crowell (fig. 24 emb). Crowell discloses a blank and a three dimensional form including two rhomboid panels connected along a second fold line centrally located within the blank (as shown in fig. 24) and a securing flap 72 as claimed. With respect to claims 12 and 47, Crowell discloses formation of an image on the outside of the container. With respect to claims 20, 32, 55 and 67, no distinction is seen between the claimed collectable recreation card and the blank/form of Crowell as a result of the claimed intended use of the flat sheet, i.e. the blank/form of Crowell is capable of the intended use claimed.

4. Claims 1, 10, 11, 21, 24-29, 31, 32, 36, 45, 46, 56, 59-62, 66 and 67, and claims 13-15 and 48-50 as best understood in view of paragraph 1 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Wallach. Wallach discloses a blank and a three dimensional form including two rhomboid panels (1a, 1b; 1c, 1d) connected along a second fold line formed intermediate panels 1b, 1c and a securing flap 2 as claimed. With respect to claims 13-15, 27-29 and 48-50, note is made that the blank and form include an image on both sides and the images are both the same (firm name) and different (firm name and mailing label) insofar as claimed.

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With respect to claims 32 and 67, no distinction is seen between the claimed collectable recreation card and the form of Wallach as a result of the claimed intended use of the flat sheet, i.e. the form of Wallach is capable of the intended use claimed.

5. Claims 1-6, 9-11, 21-26, 31, 36-41, 44-46, 56-61 and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Weissman (figs. 1-14 emb). Weissman discloses a blank and a three dimensional form including two rhomboid panels connected along a second fold line 24 and three securing flaps 40 as claimed.

6. Claims 1-11, 19, 21-26, 31, 36-46, 54, 56-61 and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Mustoe. Mustoe discloses a blank and a three dimensional form including two rhomboid panels connected along a second fold line 16b and three securing flaps 14 as claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 16, 17, 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowell (fig. 24 emb) in view of Hanson. Crowell discloses all structure of the claimed blank except images on the four triangular panels and, with respect to claims 17, the images forming a portion of a complete image. Hanson teaches that it is known to make an image on multiple sides of a container which extends completely around the container. It would have been obvious

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to make an image on the blank of Crowell as taught by Hanson to facilitate advertisement and/or to provide a more aesthetic container.

9. Claims 18 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 17 and 52 above, and further in view of either Reese et al or Lisbon. Modified Crowell does not disclose covering indicia on a blank using an adhered film. It would have been obvious to form the indicia of modified Crowell with an outer protective covering film as taught by either Reese et al or Lisbon to provide a more aesthetic appearance to the indicia and to protect the indicia from damage. Plastic films are well known to prevent scuffing and protect the appearance of indicia on containers.

10. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallach in view of Hanson. Wallach discloses all structure of the claimed form except forming at least one of the images as a portion of a complete image. Hanson teaches that it is known to make a container with images formed on each side of a box which are each a portion of a larger image. It would have been obvious to make the container or form of Wallach with partial images formed on each side as taught by Hanson to provide a more aesthetic container.

11. Claims 33-35 and 68-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weissman in view of Gavula, Jr. Weissman discloses all structure of the claimed display form except an image on each of face of the polyhedron, at least five image portions forming a complete image (cls. 34 and 69) or formation of the form as a dodecahedron. Gavula, Jr. teaches that it is known to make different images on the surface of attached blanks of a polyhedron which together form a complete image. It would have been obvious to make the polyhedron in Weissman with an image formed by a plurality of partial images formed on individual container

units of the polyhedron as taught by Gavula, Jr. to facilitate advertisement and/or a more aesthetic appearance to the form. With respect to claims 34 and 69, it would further have been obvious to make the image from at least five image portions in modified Weissman as a mere selection of the size of the image and the appearance desired. The choice of what image and size of image one wishes to provide is considered to be related to the design or appearance of the form as opposed to a distinction in function. Design applications are available to patent differences related solely in the appearance of an article. With respect to claims 35 and 70, it would have been obvious to make the form with twelve sides as opposed to the number of sides shown in Weissman as a mere selection of the shape of the form desired. Mere changes in the shape/form have been held to be obvious to one of ordinary skill in this art. See In re Dailey, 149 USPQ 47 (CCPA 1976) and Graham v. John Deere Co., 148 USPQ 459.

12. Claims 63 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallach or Crowell, each in view of Hanson. Each of Wallach and Crowell discloses all structure of the claimed form except images which are the same (cl. 63) or images which form a complete image. Hanson teaches that it is known to make images on a container where the images are the same and form a larger image around the container. It would have been obvious to form the container in either Wallach or Crowell with a complete outer image as taught by Hanson to provide a more aesthetic container and/or to provide advertisement.

13. Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Wallach or Crowell, each in view of Hollander. Each of Wallach and Crowell discloses all structure of the claimed form except formation of images which are different on the triangular panels of the form. Hollander teaches that it is known to form different images on each side of a container. It

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would have been obvious to make each of side of the form in either Wallach or Crowell with a different image as taught by Hollander as a mere choice as to what indicia one wishes to display and to provide a display on any side which may be viewed by the user.

14. Claims 71-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowell in view of Paige or Kner. Crowell discloses all structure of the claimed kit except instructions for folding the card/blank and a plurality of blanks/cards (cls. 72 and 74). Each of Paige and Kner teaches that it is known to include instructions for folding a blank into a form. It would have been obvious to provide the form of Crowell with erection instructions as taught by either Paige or Kner to help the user to make the form. With respect to claims 72 and 74, official notice is taken that it is known to mass produce a plurality of blanks/cards and to ship and sell pluralities of blanks as a package. It would have been obvious to combine at least two blanks/cards as in modified Crowell in view of the well known concept of mass production and selling of blanks/cards since such production and retail is economically more feasible.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

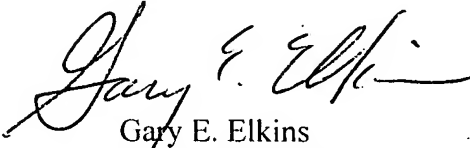
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Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3782

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18 March 2007